

VIRGINIA ALCOHOLIC BEVERAGE CONTROL BOARD

RICHMOND

IN THE MATTER OF BLAKELY'S, INC.
 BLAKELY'S, INC.
 414 BATTLEFIELD BOULEVARD S.
 CHESAPEAKE, VIRGINIA 23322-5314

MAILING ADDRESS ATTN: AUDREY HARRIS
 6511 GLEBE POINT ROAD
 CHESTERFIELD, VIRGINIA 23838

LICENSE NOS. 052246 - WINE AND BEER ON PREMISES
 052246 - MIXED BEVERAGE RESTAURANT

INCIDENT NOS. 201005200033, 201102110092 & 201105200041

INFORMAL CONFERENCE At Richmond, Virginia
HELD BY PHONE June 7 & 8, 2011

CHIEF
ADMINISTRATIVE
HEARING OFFICER ROBERT S. O'NEAL

APPEARANCES FOR THE BOARD:

 Kyle Blanks, ABC Assistant Special Agent-In-
 Charge

FOR THE LICENSED CORPORATION:

Martin A. Thomas, Sr., Esq.
Decker, Cardon, Thomas, Weintraub & Neskis,
P.C.
Towne Bank Building
109 E. Main Street, Suite 200
P.O. Box 3787
Norfolk, Virginia 23514-3787

Audrey Harris, Owner

Cite As:

IN RE: *Blakely's Inc., #052246 (06/08/2011)*

C O M P L A I N T S

(Wine and Beer On Premises)

(Mixed Beverage Restaurant)

Incident Nos. 201005200033, 201102110092 & 201105200041

1. During the preceding license year April 1, 2009 through March 31, 2010, the gross receipts from the sale of food and nonalcoholic beverages at the licensed establishment were less than forty-five percent of the gross receipts from the sale of mixed beverages and food, in violation of Sections 4.1-210, 4.1-114 and 4.1-225 1.c. of the Code of Virginia. (Mixed Beverage Restaurant)
2. The licensee cannot demonstrate financial responsibility sufficient to meet the requirements of the business conducted under the license issued by the Board, in violation of Section 4.1-225 1.f. of the Code of Virginia. (Wine and Beer On Premises & Mixed Beverage Restaurant)
3. The licensee cannot demonstrate financial responsibility sufficient to meet the requirements of the business conducted under the license issued by the Board, in violation of Section 4.1-225 1.f. of the Code of Virginia. (Wine and Beer On Premises & Mixed Beverage Restaurant)

1 4. A cause exists for which the Board would be entitled to
2 refuse to issue a license, in that the place occupied by
3 the licensee is so located that violations of the ABC Act
4 or the laws of the Commonwealth relating to peace and good
5 order have resulted from issuance of the license and
6 operation thereunder, in violation of Sections 4.1-222
7 A.2.b., 4.1-225 5. and 4.1-203 of the Code of Virginia.
8 (Wine and Beer On Premises & Mixed Beverage Restaurant)
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10 5. On or about January 1, 2008 through May 1, 2011, the
11 licensee failed to comply with ABC law in that the place
12 occupied by the licensee has become a meeting place or
13 rendezvous for illegal users of narcotics, drunks, and
14 habitual law violators or has become a place where illegal
15 drugs are regularly used or distributed, in violation of
16 Section 4.1-225.2.c. of the Code of Virginia. (Wine and
17 Beer On Premises & Mixed Beverage Restaurant)
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19 6. A cause exists for which the Board would be entitled
20 to refuse to issue a license, in that the licensee has
21 failed to take reasonable measures to prevent the licensed
22 premises, an adjacent premises owned or leased by the
23 licensee, or public property adjacent to the licensed
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1 premises, from being a place where patrons of the
2 establishment commit criminal violations enumerated in 4.1-
3 225 (1) q. and such violations lead to arrests that are so
4 frequent and serious as to be reasonably deemed a
5 continuing threat to public safety, in violation of Section
6 4.1-225 (1) q. of the Code of Virginia. (Wine and Beer On
7 Premises & Mixed Beverage Restaurant)
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1 **MEMORANDUM DECISION:**

2 A hearing was scheduled for Blakely's, Inc., ABC license
3 number 052246, to be held on June 10, 2011, pursuant to six
4 administrative charges filed against the licensee, outlined
5 *supra*. Of these charges, Charges 4, 5, and 6 were filed as a
6 result of an investigation conducted by ABC agents after the
7 City of Chesapeake Circuit Court issued a Temporary Injunction
8 Order enjoining the licensee and its agents from selling,
9 dispensing, or offering in any manner alcoholic beverages on the
10 premises until the Temporary Injunction Order was either
11 modified by the Court or until the issuance of a final
12 determination by the Alcoholic Beverage Control Board [see *City*
13 *of Chesapeake, Virginia v. Blakely's, Inc.*, Case No: CL11-935,
14 (Temporary Injunction Order, Circuit Court of the City of
15 Chesapeake, entered May 18, 2011)].¹
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17 On June 7, 2011, an informal conference was held in this
18 matter pursuant to the Virginia Administrative Process Act,
19 §2.2-4019 of the Code of Virginia and under 3 VAC 5-10-130 of
20 the ABC Regulations. Mr. Martin Thomas, counsel for the
21 licensee, indicated by telephone that his client wished to
22 surrender the ABC license as being revoked on June 8, 2011 and
23 to waive further hearing proceedings. This motion was
24 considered and approved by the Chief Administrative Hearing

25 ¹ The injunction was entered as Exhibit 1 in the record for this informal conference.

1 Officer during the phone conference. As agreed, the owner of
2 the establishment, Ms. Audrey Harris, appeared in the Chesapeake
3 Regional ABC Office on June 8, 2011, and indicated her intention
4 to surrender the current ABC licenses as being revoked. She
5 surrendered the hard copy ABC license from the establishment,
6 license #052246 (wine and beer on-premises and mixed beverage
7 restaurant licenses) to ABC Assistant Special Agent-in-Charge
8 (ASAC) Kyle Blanks and signed her name on the face of the
9 license with the notation "License is Surrendered as Revoked"
10 (attached as Exhibit 2). ASAC Kyle Blanks issued a Stock
11 Disposition Report/Permit for this location and approved any
12 remaining alcoholic beverages to be sold back to the Virginia
13 ABC store (spirits) or any licensed wine or beer distributor
14 (wine and beer). The Stock Disposition Report/Permit is
15 attached as Exhibit 3.

16
17 The licensee, through counsel, waived the ABC hearing and
18 ABC Board appeal process in this case in order to resolve the
19 matter before the scheduled hearing, set for June 10, 2011.
20 ASAC Kyle Blanks, on behalf of ABC, also waived the ABC hearing
21 and ABC Board appeal process in favor of terminating the hearing
22 proceedings and accepting the license as being revoked from the
23 owner, Ms. Harris.

24 In consideration of the licensee's surrender of the
25 licenses as being revoked and the waiver of all ABC hearings and

1 appeal proceedings in this matter by all parties, the
2 proceedings are hereby terminated without prejudice to the Board
3 in consideration of the parties' mutually agreed upon outcome
4 for this case.

5 **DECISION:**

6 **(Wine and Beer On Premises)**

7 **(Mixed Beverage Restaurant)**

8
9 That the ABC wine and beer on-premises and mixed beverage
10 restaurant licenses, number 052246, are hereby considered to be
11 revoked by the ABC Board, effective June 8, 2011. ²

12
13 Entered this 8th day of June, 2011.

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17 _____
18 Robert S. O'Neal, Chief
19 Administrative Hearing Officer
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23 _____
24 ² Since the licenses have been surrendered as revoked by the licensee and all
25 parties have waived the ABC Board appeal process, an order will be entered
extemporaneously by the ABC Board and forwarded to all parties in this case.
A copy of the final order will also be sent to Grady A. Palmer, Esq.,
Assistant City Attorney for the City of Chesapeake, Virginia, and to the
Circuit Court for the City of Chesapeake, Virginia.